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JAN 03 2008

OFFICE OF PETITIONS

In re Application of :
Baik et al :
Application No. 10/817,140 :
Filed: April 2, 2004 :
Attorney Docket No. AM-8893 :
Title of Invention: Method of Improving the :
Uniformity of a Patterned Resist on Photomask :

**DECISION DISMISSING
PETITION**

This is a decision on the paper titled "Petition In Support of Declaration of Prior Invention Under 37 CFR §1.131" filed October 25, 2007. This petition is properly treated under 37 CFR § 1.183 waiver of § 1.131's requirement that all of the inventors sign the declaration of prior inventorship.

The petition under 37 CFR 1.183 is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

The above-identified application was filed on April 2, 2004. Applicants submitted 37 CFR 1.63 declaration on April 2, 2004. A final Office action was mailed on July 25, 2007. This office action set a shortened statutory period for reply of three months, with extensions of time obtainable under 37 CFR 1.136(a).

In response, on October 9, 2007 and October 25, 2007, applicants submitted a response, including a declaration under 37 CFR 1.131. Petitioner maintains that the 1.131 declaration is supported by a copy of the "Invention Alert". Petitioner insists that the ETEC Division of Applied Materials, inc which had employed the inventors had been disbanded and that none the inventors were currently employed by Applied Materials, inc. Petitioner states that past known addresses for the inventors were provided but only three were located.

Petitioner's arguments have been considered, but determined to be unpersuasive. Pursuant to MPEP 715.04, affidavits or declarations to overcome a rejection of a claim or claims must be made by the inventor or inventors of the subject matter of the rejected claim(s), a party qualified under 37 CFR 1.42, 1.43, or 1.47, or the assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor(s). Thus, where all of the named inventors of a pending application are not inventors of every claim of the application, any affidavit under 37 CFR 1.131 could be signed by only the inventor(s) of the subject matter of the rejected claims. Where one or more of the named inventors of the subject matter of the rejected claim(s) (who had originally signed the oath or declaration for patent application under 37 CFR 1.63) is now unavailable to sign an affidavit or declaration under 37 CFR 1.131, the affidavit or declaration under 37 CFR 1.131 may be signed by the remaining joint inventors provided a petition under 37 CFR 1.183 requesting waiver of the signature of the unavailable inventor be submitted with the affidavit or declaration under 37 CFR 1.131. Proof that the non-signing inventor is unavailable or cannot be found similar to the proof required for a petition under 37 CFR 1.47 must be submitted with the petition under 37 CFR 1.183 (see MPEP § 409.03(d)).

Petitioner has failed to show or provide adequate proof that a diligent effort was made to reach or locate inventors Osborne and Lem. Where inability to find or locate non-signing inventor (s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventors. The statement(s) of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. Copies of the results of the search must be referred to in any renewed petition. See MPEP 409.03(d). If the inventors are located, then a copy of the 37 CFR 1.131 affidavit or declaration, as well as a copy of the proof of service on that person will be required. It is important that the forthcoming communication contain, with accompanying documentation, statements of fact as opposed to conclusions. If there is an express oral refusal, a statement from the person to whom that refusal was made should be made of record.

The address provided on the petition differs from the correspondence address of record.

The address on the petition differs from the correspondence address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition. However, the Office will mail all future correspondence solely to the address of record

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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 P. O. Box 1450
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By hand: U. S. Patent and Trademark Office
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By facsimile: **(571) 273-8300**
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.



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